

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**XANADU MANAGEMENT &
CONSULTING CORPORATION**

9640 Lottsford Court
Largo, Maryland 20774

Plaintiff,

v.

UNITED STATES OF AMERICA,

and

**UNITED STATES OF AMERICA
INTERNAL REVENUE SERVICE**

Defendants.

Case No.: 1:24-CV-03626

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COMPLAINT

Plaintiff, Xanadu Management & Consulting Corporation (“Xanadu” or “Plaintiff”) by and through its undersigned counsel, and pursuant to 26 U.S.C. § 7422, hereby sues Defendants, the United States of America (the “USA”), and the United States of America Internal Revenue Services (the “IRS,” and together with the USA, “Defendants”). For its Complaint against Defendants, Plaintiff states as follows:

PARTIES

1. Plaintiff Xanadu is a for-profit corporation organized under Maryland law, with its principal place of business located at 9640 Lottsford Court, Largo, Maryland 20774.

2. Defendant, the United States of America Internal Revenue Service is a bureau within the Executive Branch of the United States of America government organized within the Department of Treasury tasked with assessing and collecting internal revenue in the United States.

3. Xanadu operates Jasper's Restaurant ("Jasper's"), a restaurant located in Largo, Maryland.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1340, 1346, and 26 U.S.C. § 7422.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1), because Plaintiff maintains its principal places of business in Maryland, and a substantial part of events giving rise to this action occurred in Maryland.

FACTS

The CARES Act & Various Emergency Orders

6. On March 5, 2020, pursuant to the emergency powers of the Governor to protect the health and safety of the citizens of Maryland, Maryland Governor Larry Hogan ("Governor Hogan") issued a statewide Executive Order declaring a State of Emergency and Existence of Catastrophic Health Emergency due to COVID-19.

7. On March 12, 2020, Governor Hogan issued a statewide Executive Order (the "March 12 Order"), prohibiting, *inter alia*, large gatherings and events.

8. On March 16, 2020, Governor Hogan reinstated the March 12 Order, and amended it to require bars, restaurants, fitness centres, and theatres to close.

9. On or about March 27, 2020, in response to the COVID-19 pandemic's impact on businesses, Congress enacted the Coronavirus Aid Relief and Economic Security Act ("the CARES Act").

10. As a part of the CARES Act, Congress established an employee retention credit ("ERC") on eligible wages paid between March 12, 2020, and December 31, 2020. For each year

an employer paid qualified wages, the employer could claim a credit for fifty percent (50%) of those qualified wages, with a maximum credit of \$10,000 per employee per year.

11. The credit was available to businesses that (a) suffered an initial 50% or more reduction in gross receipts from the same quarter in 2019, and (b) maintained a 20% or more reduction in subsequent quarters, or (c) had their operations fully or partially suspended due to a government order.

12. The CARES Act required entities to submit ERC claims by filing Form 941-X (Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund).

13. On or about December 27, 2020, Congress extended ERC eligibility through June 30, 2021, and increased the ERC to 70% of up to \$10,000 of qualified wages per employee per quarter.

14. On or about March 11, 2021, Congress passed the American Rescue Plan Act, which extended the ERC through December 31, 2021.

15. On March 23, 2023, Governor Hogan issued another statewide Executive Order (the "March 23 Order") reinstating the March 12 Order.

16. The March 23 Order required "Non-Essential Businesses," which included restaurants, to close at 5:00 p.m. that day.

Xanadu's Claims

17. From 2019 through 2022, Xanadu employed on average 100 or fewer full-time employees.

18. From 2019 through 2022, Xanadu paid qualified wages to all its employees.

19. Effective March 23, 2023, at 5:00 p.m., pursuant to the March 23 Order, Xanadu closed Jasper's.

20. Xanadu's gross receipts for the employment tax quarters ending June 30, 2020, September 30, 2020, and December 31, 2020, were all less than 50% of the gross receipts for the same employment tax quarter in the previous year.

21. Xanadu paid all amounts due for employment tax to the IRS for the employment quarters referenced in the preceding paragraph.

22. On March 31, 2022, Xanadu filed three separate ERC claims, each on a separate Form 941-X (collectively, the "Claims").

23. Each of the Claims is attached hereto as **Exhibit 1** and incorporated herein by this reference. The Claims are described and summarized as follows:

Exhibit	Period Covered	Amount
1	2 nd Quarter - 2020	\$26,209.24
2	3 rd Quarter - 2020	\$212,319.02
3	4 th Quarter - 2020	\$170,096.42
TOTAL		\$408,624.68

24. Xanadu maintained adequate and accurate documentation to support the determination of gross receipts for the employment quarters provided above.

25. Accordingly, Xanadu was an eligible employer under all applicable statutory provisions, including the Internal Revenue Code and the CARES Act.

26. Xanadu has not received payment of any refund on any of the Claims.

The IRS Moratorium on Processing ERC Claims

27. On or about September 14, 2023, the IRS announced that it would, until at least the end of 2023, stop processing all ERC claims filed after that date due to concerns of fraudulently or inaccurately filed claims and the processing of such claims.

28. On August 8, 2024, the IRS announced it was resuming the processing of ERC claims filed between September 14, 2023 and January 31, 2024.

29. The IRS has failed to approve, deny, or provide any response to Xanadu regarding the Claims.

COUNT I – CLAIM FOR REFUND

30. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

31. Xanadu filed the Claims within three years of filing the respective returns, as required by 26 U.S.C. § 6511.

32. The Claims were filed before September 14, 2023, and thus should not have been affected by the IRS' self-imposed moratorium on the processing of ERC claims.

33. Pursuant to and compliant with 26 U.S.C. §§ 6532(a)(1), and 7442(a), Xanadu is filing suit more than six months after it filed the Claims with the IRS.

34. Nonetheless, the IRS has inexplicably failed to approve, deny, or provide any response to the Claims.

35. Xanadu is the sole owner of the Claims, and has made no assignment of its Claims.

36. Accordingly, Xanadu is due a refund of the Claims for federal employment tax for the tax quarters ending June 30, 2020, September 30, 2020, and December 31, 2020, in the amount of Four Hundred Eight Thousand Six Hundred Twenty-Four and Sixty-Eight Cents (\$408,624.68).

WHEREFORE, Plaintiff, Xanadu Management & Consulting Corporation demands judgment in its favour and against Defendants the United States of America and the United States of America Internal Revenue Service, jointly and severally, for (a) compensatory damages in the amount of Four Hundred Eight Thousand Six Hundred Twenty-Four and Sixty-Eight Cents (\$408,624.68) or such other amount as may be proven at trial, plus (b) pre-judgment interest at the

legal rate under 26 U.S.C. § 6611, (c) post-judgment interest at the legal rate under the same section, (d) the costs of this action, (e) its reasonable attorneys' fees incurred in this action, and (f) such other and further relief as the nature of its cause may require.

Dated: December 16, 2024

/s/ Jung Yong Lee

Michael J. Lentz (Fed. Bar No. 26097)

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